

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**ORIGINAL
FILE**

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In the Matter of)

Amendment of Part 74 of)
the Commission's Rules)

RM-7772

SEP 13 1991

Federal Communications Commission
Office of the Secretary

As we shall discuss, most of the proposals advanced in the CBA petition were considered *and rejected* by the Commission when it established the low power service. CBA offers no reason why the Commission's considered judgments in 1982 should now be changed. While the Commission is free to modify its policies in the light of changed circumstances, it must be able to articulate what those changed circumstances are and how they relate to the policies to be altered. *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 41-43 (1983); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). The CBA petition provides no basis on which the Commission could meet these obligations.

Indeed, CBA candidly admits that one of its objectives is to enhance low power stations' ability to be included within any new must carry rules. Petition at 8 n. 10. Again, CBA seeks a status that low power stations have never had. While the Commission's 1972 must carry rules did require cable systems to carry certain translators, the Commission decided that translators which originate programming

comparative hearing and constructed for a comparative pittance into the equivalent of a full power station potentially worth millions of dollars more than the LPTV facility? Understanding of CBA's motives, however, is no substitute for a determination that the public interest supports such a change in the status of the low power service. Instead, the public interest counsels against such changes.

First, there can no longer be any notion that increasing the number of television outlets is an unalloyed public good. The Commission's Office of Plans and Policy in a thorough report on the future of television this Summer concluded that it is unlikely that many existing television stations will be able to survive absent significant regulatory changes.^{2/}

While LPTV stations doubtless provide a valuable new public service in some areas where there is little or no local conventional television service, the CBA Petition does not indicate that such facilities are hampered in their operations by the Commission's existing rules. For example, CBA contends that viewers are confused by the term "low power" and the unconventional call signs assigned to LPTV stations. If that is so, it is a problem which is unlikely to be significant in an area where the LPTV station provides the only local television service. The supposed confusion would only become a problem if there are other television outlets available to viewers. It is in those areas, however, where CBA wishes to make low power

^{2/} FCC Office of Plans & Policy, *Broadcast Television in a Multichannel Marketplace* (June 1991).

stations appear to be more like conventional stations. Doing so would only threaten the ability of existing stations to provide public service.

Second, LPTV stations should not receive enhanced recognition from the Commission because the spectrum they now use may soon be needed for other purposes. The Commission has adopted a goal of providing High Definition Television (HDTV) by simulcasting with conventional television signals. In order to provide channel capacity for HDTV signals for all full power television signals, the channels used by many LPTV stations may need to be reclaimed from their current secondary use. It would make no sense for the Commission to provide augmented status for LPTV stations when, at the same time, it contemplates adopting an HDTV standard which may displace many of those stations. The Commission will recall its characterization of LPTV stations as ones "that have no coverage requirements and whose continued existence is uncertain in light of their secondary status." *Low Power Television Service*, 51 RR 2d at 490.

Turning to CBA's specific proposals, they appear to be a request for the Commission to create another category of low power service for stations which agree to air a minimal amount of locally produced programming. In exchange for this commitment, these stations would become part of a new "community broadcasting service," be subject to various Commission rules not now applied to the low power service such as multiple ownership rules, be entitled to greater power, have conventional call letters, and receive various other regulatory benefits.

The Commission's present low power rules allow LPTV stations to operate as translators, program originators, or providers of subscription services in any combination. 47 C.F.R. § 74.731(i). Stations in this service may change the amount of each type of service they provide without notice and need only inform the Commission if they intend to commence program origination. *Id.* § 74.732(e). CBA does not suggest how its proposed changes are to be integrated into this flexible regulatory structure. Suppose an LPTV station begins to provide the local service CBA would require for certification as a community broadcasting station, and the station receives such certification. If it later decides to stop producing local programs, must it report this to the Commission or seek Commission approval before making the change? Must it then change its call letters back to what they were before certification and reduce power emissions to ones within the regular LPTV limits? If an LPTV station cannot change its status, one of the Commission's goals in establishing the service will be lost. And if a station can switch back and forth, the changes in operation which would be required are certainly likely to cause great confusion to the public.

CBA does not address other practical problems with its proposed changes in the low power service. If the multiple ownership rules apply to stations which meet the local programming standards, how are LPTV stations licensed to the same owners which have not been certified as community broadcasting stations to be treated? Could one operator own an unlimited number of LPTV stations so long as no more than 12 are at any one time certified as community broadcasting stations? Such rules are also likely to do little more than create chaos and uncertainty.

CBA insists (Petition at 4) that the irregular call letters assigned to stations in the low power service are responsible for the alleged difficulties these stations have in

Id. at 491-92. The only reason advanced by CBA for increased power limits is to permit low power stations to serve a wider area, a goal which may be inconsistent with the purpose for which the service was established, and which is based on no change in circumstances from the identical proposal already rejected by the Commission. CBA does not address the public interest benefits which the Commission would have to find in order to impose upon itself and other licensees the burden of dealing with the interference that increased power levels would certainly cause.

Finally, CBA proposes that the benefits of changed rules only be granted to LPTV stations which provide a required amount of local programming. Under the CBA proposal, a low power station could change status by providing only 5.6 hours *per week* of local programs. Moreover, CAB does not suggest any requirement that this local programming be of any type. It would not have to be local news or public affairs programming. A station could obtain enhanced status by airing a local

~~channel, and a station of local origin, "infomercials." Moreover, the~~

Conclusion

For the foregoing reasons, the Commission should deny the Petition for Rule

Certificate of Service

I, Catherine McManus, a Secretary in the Legal Department of the National Association of Broadcasters, hereby certify that I have, this 13th day of September 1991, caused to be sent by mail, first class postage prepaid, a copy of the foregoing "Comments of the National Association of Broadcasters" to the following:

Peter Tannenwald, Esquire
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

*Counsel for the Community Broadcasters
Association*


Catherine McManus